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May 29, 2007

TO: Liz Klumpp, Senior Energy Policy Analyst
Washington Department of Community, Trade
and Economic Development
FR: Bill LaBorde, State Director, WashPIRG and Environment Washington
RE: May 14 Draft Rule Language

Via Electronic Mail

Environment Washington respectfully submits these comments on the May 14 Draft Rule Language (draft rules) being developed for the implementation of the Energy Independence Act (I-937). Environment Washington is a statewide nonprofit, nonpartisan public interest organization dedicated to protecting Washington's air, water and open spaces. Environment Washington is the new home of WashPIRG's environmental work. We submit these comments on behalf of both organizations and our combined 30,000+ members.

While Environment Washington is a new organization not in existence at the time I-937 was submitted to voters, WashPIRG was one of the original sponsors of I-937, helped collect a significant number of the signatures needed to place the measure on the ballot, helped draft the text, and contributed significant resources to persuading a majority of Washington voters to approve the measure. Because of this history with I-937, we are very interested in the outcome of this rulemaking. As one of the chief advocates for the governor and legislature's recent actions on climate change, we are also concerned with the effect this rulemaking will have on Washington's efforts to meet the global warming emission reduction goals that were established by Governor Gregoire in Executive Order 07-02 and codified by the Legislature in SB6001.

Environment Washington and WashPIRG appreciate the efforts of staff to work with the stakeholders in the development of these draft regulations. We recognize, as did I-937 itself, that some flexibility is necessary to allow for the most effective implementation. However, in a few areas the draft rules go beyond necessary flexibility and are inconsistent with the letter and intent of the Act. The rules, as currently drafted, will not lead to fully effective implementation of the Act, and we strongly urge Staff to address the concerns described below. By reference, we also support the more detailed comments of NW Energy Coalition and Renewable Northwest Project, especially as I represent WashPIRG/Environment Washington on the boards of both organizations.

We very much intended the initiative to be a statement on how Washingtonians wanted their

utilities to spend the bulk of their dollars on meeting new demand. We intended for virtually all new demand for electricity to be met with energy saved through conservation, and renewable resources. Environment Washington and WashPIRG is concerned that elements of the draft rules undermine this intent:

Conservation (WAC 194-37-040/-050/-060/-090/-100)

- 1) CTED's proposal to allow utilities to utilize production and distribution efficiency improvements to potentially offset acquisition of end-use efficiency is unacceptable and contrary to the intent of the law.
- 2) The law explicitly states that a utility must use the NW Power and Conservation Council's methodologies to assess its cost-effective conservation potential. That critical component of the conservation standard must not be undermined. Council methodology includes use of the Council's achievability potential, acceleration of conservation acquisition, and use of market forecasts for determining avoided cost (or at a minimum, disallowing use of embedded resources to determine avoided cost).

Renewable Energy (WAC 194-37-110)

- 1) CTED's renewable resource energy reporting language effectively changes the requirements of the Act from meeting targets by January 1 of each compliance year to meeting targets by December 31 of the following year. The proposed language is unacceptable as a legislative change in outside CTED purview.
- 2) CTED's language allows incremental cost calculations to be made on the basis of resources such as BPA Priority Firm, and surplus sales at potentially below-market costs that do not meet the "generally available" standard of the Act. This would constitute legislative change in law beyond any agency's authority under the state constitution.
- 3) CTED's language allows utilities to count hydro-efficiency improvements on contracted resources in contradiction to the Act's requirement that such improvements may be counted only from a utility's owned resources. Again, this goes beyond CTED's authority under either the Act itself or under the state constitution more generally.
- 4) CTED proposes to allow utilities the option of revising incremental cost calculations from renewable resources at virtually any time, having the effect of allowing the utilities to ratchet up incremental costs, without any obligation to reduce them if market conditions reverse. The proposed language is unacceptable as a transparent effort to undermine the Act's 4% cost cap provisions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bill LaBorde', with a stylized, cursive script.

Bill LaBorde
WashPIRG/Environment Washington
State Director